IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1580 OF 2005

Smt. Mumtaz Mohamed Farooque Shaikh .. Petitioner

V/s

The Administrator General & Ors. .. Respondents

Mr.O.J. Menezes with Mr.I.S. Mecwan i/b Mr.B.M. Salunkhe for the Petitioner.

Mr.R.J. Mane, A.G.P. for Respondents No.1 and 2.

Ms.Aruna Savla for Respondent No.3.

Ms.S. Bhandari for Respondent No.4.

CORAM : H.L. GOKHALE & ABHAY S. OKA, JJ.

DATE : 27TH FEBRUARY 2006

P.C. :

1. Heard the counsel for the parties.

2. The petition seeks to challenge the order passed by the Administrator General, Maharashtra State on 10th December 2003 dismissing the application for withdrawal of Petition No.61 of 2002 which the Petitioner had filed under Section 29 of the Administrator Generals Act.

3. The Petitioner claims to be the daughter of one Fatimabi Abdulla Shaikh who died intestate on 26th August 1985. This Fatimabi was a tenant of a municipal

shop situated in a municipal colony at Deonar. It is her case that she is entitled to get the particular shop in her name.

4. The above proceeding was filed for getting the necessary certificate from the office of the Administrator General. Respondent No.4 contested the same by pointing out that she had taken over the shop under an agreement with the deceased. It was also pointed out that on the basis of a decree, which, according to Respondent No.4, was a collusive and erroneous one, obtained in the Court of Small Causes, Respondent No.4 has been ousted from the shop. In any case, thereafter the Petitioner wanted to withdraw the proceeding and she therefore made an application. That application came to be rejected by the order passed by the Administrator General. It is material to note that Respondent No.4 has in the meanwhile filed a suit in the Bombay City Civil Court for a declaration that the decree passed by the Small Causes Court is a nullity and that Respondent No.4 alone has the rights in the concerned shop. We are further told that the Receiver has been appointed though the Petitioner is in charge of the particular shop as the agent of the Receiver.

5. In any case, since the Petitioner wanted to withdraw the proceedings before the Administrator

General, no prejudice would have been caused to Respondent No.4 by the withdrawal simpliciter. Mr.Menezes states that the withdrawal was sought with a view to take out proceedings in the appropriate forum. In our view, that should have been permitted.

6. In the circumstances, we set aside the order dated 10th December 2003 and allow the application made by the Petitioner for withdrawal of Petition No.61 of 2002. That petition will stand dismissed as withdrawn.

7. Mr.Menezes makes a statement that in the event the Petitioner intends to take any further proceeding concerning the particular shop, she will give a notice to Respondent No.4 before moving the concerned forum at least one week in advance prior to seeking any interim or ad-interim order therein. He states that notice will be given without prejudice to the contentions of the Petitioner that Respondent No.4 has no locus in the premises.

8. Petition stands disposed of.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)